144681

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: TRW, Inc.

File: B-243450.2

Date: August 16, 1991

Catherine B. Steger, Esq., for the protester.
Joel R. Feidelman, Esq., and Daniel I. Gordon, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Science Applications International Corporation, an interested party.
Jeffrey I. Kessler, Esq., Department of the Army, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In determining whether to grant access to documents under a protective order, the General Accounting Office will consider whether the applicant is involved in competitive decisionmaking, thus creating an unacceptable risk that the protected materials will be inadvertently disclosed.

2. Protest that agency did not hold meaningful discussions with protester is denied where, assuming the agency did not adequately question protester concerning two subfactors for which the protester received an unsatisfactory score, the protester was not prejudiced as a result because, even if the protester received the maximum points available for the subfactors, the protester's technical proposal would remain technically equal to the awardee's technical proposal and, given the substantially higher cost of the protester's proposal, the award decision would not change.

3. In evaluating the protester's technical proposal under solicitation for program and integration support for a chemical weapons demilitarization program, it was reasonable for the agency to take into consideration that: (1) the proposed project manager did not have experience managing a task-type contract, since the solicitation contemplated the award of such a contract; and (2) neither the protester nor the protester's proposed subcontractors had sufficient trial burn experience, since the contractor would be required to support contractors performing trial burns under other

contracts within the chemical weapons demilitarization program.

4. Protest that agency failed to perform a reasonable cost realism analysis of the awardee's proposal because the agency did not consider that the awardee's low proposed cost reflected its lack of understanding of the agency's requirements is denied, where the agency downgraded the awardee's technical score in areas where the awardee's proposed level of effort was insufficient, but generally found that the awardee's proposed level of effort was reasonable for the awardee's approach.

5. Protest that agency should have eliminated protester's proposal from the competitive range is dismissed as untimely where it was not filed within 10 working days after the protester knew the protest basis.

DECISION

TRW, Inc. protests the award of a contract to Science Applications International Corporation (SAIC) under request for proposals (RFP) No. DAAA15-90-R-1003, issued by the Department of the Army for program and integration support for the Army's chemical weapons demilitarization program. TRW protests that in awarding the contract to SAIC the Army did not hold meaningful discussions with TRW, did not reasonably evaluate the firm's proposal, and did not perform a reasonable cost realism analysis of SAIC's proposal. In the alternative, TRW argues that its proposal should not have been included in the competitive range.

We deny the protest in part and dismiss it in part.

BACKGROUND

The Secretary of Defense has been charged with the responsibility of destroying the United States's stockpile of chemical agents and munitions in existence as of November 8, 1985. The chemicals are stored at eight military facilities in the continental United States (CONUS) and on the Johnston Atoll in the South Pacific. The Army has awarded several contracts to contractors who are procuring, constructing, and operating the demilitarization facilities at the eight CONUS sites, and operating a central training facility. The current RFP was issued for a Program and Integration Support Contractor (PAISC) to provide integration and support activities for facilities design, equipment acquisition, equipment installation, quality assurance, and surety and mission support. The contractor will track, integrate, and coordinate the efforts of several other contractors. It will also perform studies and evaluations, collect and collate data, and prepare

technical and management reports. The contract will run for 5 years.

The RFP called for a cost-plus-fixed-fee, indefinite quantity/ indefinite delivery contract for line items 0001, 0002, and 0003, under which the Army can place delivery orders within the scope of the statement of work, RFP section C.4. The RFP detailed nine tasks representing the kind of work that can be ordered under section C.4. The RFP also solicited firm, fixed-prices for line items 0006 through 0012, under which the Army can place orders for tasks that are to be performed in accordance with section C.5. and appendices 1 through 6.

In responding to the RFP offerors were required to submit a technical/management proposal and a cost proposal. In the technical/management proposal offerors were to describe their approach to satisfying the statement of work, and prepare technical proposals on the nine evaluation tasks. In addition, the offerors were to prepare fixed-priced proposals for each demilitarization site for each of the 5 contract years. Finally, the offerors were to provide offeror-defined tasks that described their approaches to program integration.

The RFP provided for the evaluation of seven technical/ management factors and cost. The technical/management factors were to be point scored and combined into a merit rating. These factors were listed in descending order of importance and each was followed by a number of subfactors, which were equal in weight. The cost proposals were to be evaluated for magnitude and realism. Section M.2. of the RFP, Basis For Award, provided:

> "The basis for award of a contract as a result of this solicitation will be an integrated assessment by the Source Selection Authority of the results of the evaluation of the areas, elements, and factors set forth, giving due consideration to the relative order of importance indicated in M.3. The government will evaluate the extent to which the offeror exhibits capability in the evaluation areas. Ultimately, the source selection decision will take into account the contractor's capability to meet the requirements of this solicitation on a timely and cost effective basis. Accordingly, the Government may award any resulting contract to other than the lowest priced offeror, or other than the offeror with the highest merit rating."

Section M.3., Evaluation Areas and Their Relative Order of Importance, provided in part:

> "The Technical/Management factors will be combined into a merit rating for the area. The estimated cost to the Government of the performance of this contract over its entire life will be projected as described in M.5. The Source Selection Authority, in making the integrated assessment of the results of the evaluation of the factors herein, will give due consideration to the relative order of importance of merit rating and projected cost.
>
> "The Technical/Management merit rating is more important than projected cost. The Government's primary concerns for this procurement are technical and management capability. Accordingly, we are willing to pay more if an increase in technical and management capabilities so warrants. However, projected cost may become more significant in the event that competing merit ratings are closely grouped and offer comparable merit contributions to the Government."

Section M.5., Cost, provided:

> "The cost proposals for the Tasks will be analyzed for magnitude and realism. The costs proposed for the Tasks will be adjusted as necessary to establish the probable cost to the Government for performance of the work described in the Task Work Statements. The probable cost of the Tasks and the prices proposed for line items 6 through 12 will then be used to project the probable cost to the Government for performance of all estimated requirements during the 60 month term of the contract. This projected cost from each offeror will be used as the basis for comparison with other offerors with respect to the cost factor in accordance with paragraph M.3. . . ."

The technical/management proposals were to be evaluated by a source selection evaluation board (SSEB) technical committee. For each proposal the SSEB technical committee scored each of the 25 subfactors on the basis of a 10 point scale under which a proposal received 0 points if it was clearly unsatisfactory; 1-3 points if it was unsatisfactory, but negotiable with the offeror; 4-5 points if it met the minimum requirements of the RFP; 6-8 points if it was highly satisfactory; and 9-10 points if it was exceptional. This evaluation resulted in the offeror's raw score. The SSEB technical committee was also to review the proposals to ensure that the offeror's proposed level of effort was sufficient. The SSEB

cost committee then computed a probable cost to the government for each offeror. The SSEB provided its results to the source selection advisory council (SSAC), which was to review the results and assign the appropriate weight to each evaluation factor. The total possible score a proposal could receive after the weights were assigned to the evaluation factors was 1,075. The SSAC was also responsible for making an award recommendation to the source selection authority (SSA), who was to choose the awardee.

Five offerors responded to the RFP by the March 30, 1990, closing date. After the initial evaluations by the SSEB technical team, the protester, the awardee, and Arthur D. Little, Inc. (ADL), were included in the competitive range. Multiple rounds of discussions were held with each of these offerors, and best and final offers (BAFO) were requested by January 7, 1991. After the BAFOs were evaluated the weighted scores were: ADL, 547.25; SAIC, 478.83; and TRW, 471.58. The SSEB technical team then reviewed each offeror's proposed direct labor hours and proposed travel, and adjusted the proposal to match the offeror's technical approach. The Defense Contract Audit Agency (DCAA) audited the offerors' labor rates, and other indirect and direct cost rates. The information from the SSEB technical committee and DCAA was then provided to the SSEB cost committee, which used this information to adjust the offerors' proposed costs for realism, and in doing so came up with the probable cost to the government of awarding the contract to each offeror. The cost proposals as adjusted for cost realism were: ADL, $196,895,987; SAIC, $127,722,021; and TRW, $274,133,198.

The SSAC reviewed the technical evaluations and the cost adjustments for each offeror. The SSAC considered the strengths and weaknesses of each offeror and concluded that no offeror presented a high risk of failure and that there were no major deficiencies in any of the technical/management BAFOs. The SSAC concluded that the ADL proposal was somewhat superior to the other proposals but that overall the three scores were closely grouped and the benefits to be gained by an award to ADL were not worth the $70 million cost premium. As a result, it determined that the SAIC proposal offered the best value to the government and recommended to the SSA that the contract be awarded to SAIC.

The SSA reviewed the SSAC recommendation and also performed his own analysis. In doing so he determined that based on a maximum score of 1,075 the scores of the three offerors (ADL, 547.25; SAIC, 478.83; and TRW, 471.58) were closely grouped and that, because TRW's cost was substantially higher than that of the other offerors, an award to TRW would not be appropriate. Because the proposals were relatively equal in technical merit, he determined that the award should be made

to SAIC due to its lower cost. In the alternative, the SSA found that the 76 point difference in technical scores between ADL and SAIC did not represent any technical or management capability in ADL's proposal sufficient to justify a $70 million cost premium.

ADMISSIONS TO PROTECTIVE ORDER

On April 1, 1991, we amended our Bid Protest Regulations to allow for the issuance of protective orders in connection with protests filed on or after that date. When issued, a protective order permits the release of particular documents which are claimed to contain information that is privileged, or the release of which would result in a competitive advantage, to counsel for the protester and other interested parties. See 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(d)(1)). Individuals representing parties in a protest may seek access to documents covered by a protective order by submitting applications to our Office certifying that they are not involved in competitive decisionmaking in connection with federal procurements. Each application must include a detailed written statement supporting the certification. Id., at § 21.3(d)(3).

In this case, our Office issued a protective order. Catherine Steger, Thomas Wagner and Susan Freeman, all in-house counsel with TRW, submitted applications for access to documents covered by the protective order. After reviewing their applications, affidavits, and the objections of SAIC we denied access to Catherine Steger and Thomas Wagner and granted access to Susan Freeman.

In determining whether counsel may be permitted access to information covered by a protective order, we look to whether the attorney is involved in competitive decisionmaking for the client, that is, whether the attorney's activities, associations, and relationship with the client are such as to involve advice and participation in any of the client's decisions (pricing, product design, etc.) made in light of similar or corresponding information about a competitor. See U.S. Steel Corp. v. United States, 730 F.2d 1465, 1468 (Fed. Cir. 1984). An attorney can be involved in the competitive decisionmaking of a company by working with marketing, technical and contracting personnel on procurements, even if the attorney is not a competitive decisionmaker. See Grumman Sys. Support Corp., General Services Administration Board of Contract Appeals No. 9957-P, Mar. 23, 1989, 89-2 BCA ¶ 21,744; BPD ¶ 96. Where an attorney is involved in competitive decisionmaking, the attorney will not be granted access to the proprietary data of another firm because there is an

unacceptable risk of inadvertent disclosure of the protected material. See U.S. Steel Corp. v. United States, 730 F.2d, at 1468. In determining whether to grant access to protected material, we consider such factors as whether the attorney primarily advises on litigation matters or also advises on pricing and production decisions, including the review of bids and proposals; the degree of physical separation and security with respect to those who participate in competitive decisionmaking; and the level of supervision to which in-house counsel is subject. Earle Palmer Brown Cos., Inc., B-243544; B-243544.2, Aug. 7, 1991, 91-2 CPD ¶ ___.

Catherine Steger is a general legal counsel at TRW who, among other things, gives advice to TRW personnel on government contracting issues. She is one of only two attorneys employed in the office in which she works. Thus, it is likely that she will be relied upon to render legal advice to corporate personnel on many subjects, including business-related decisions. Ms. Steger also reports to a supervisor who is a company vice president and admittedly is involved in competitive decisionmaking. Based on these factors we found that Ms. Steger, while not a competitive decisionmaker herself, is sufficiently involved by virtue of her position in competitive decisionmaking that the risk of inadvertent disclosure precluded granting Ms. Steger access to the protected documents.

Thomas Wagner provides legal advice to TRW's vice president for financial control regarding financial matters concerning, among other things, contract pricing and contract costs and conditions. In our view, this responsibility involves Mr. Wagner in TRW's business judgments and, therefore, in competitive decisionmaking. Accordingly, Mr. Wagner's access to the protected materials also was denied.

Susan Freeman manages TRW's Space and Defense Sector's employment and commercial litigation division. She litigates insurance claims and real estate disputes; does special projects regarding the allowability of costs under the Federal Acquisition Regulation (FAR); and conducts "due diligence" in connection with the potential acquisition of businesses. Thus, Ms. Freeman is removed from government contracting and the procurement field and is isolated from the company's business decisions and relationships. Based on these facts, we found that she is not involved in competitive decisionmaking and thus there is little risk of inadvertent disclosure of the protected material in the course of performing her duties. We therefore granted Ms. Freeman's application for access to the documents covered by the protective order.

MEANINGFUL DISCUSSIONS

TRW first protests that the Army failed to hold meaningful discussions with the firm. TRW asserts that at the debriefing it attended with the Army on April 5, 1991, it was informed of 21 deficiencies in its proposal, concerning among other things, its proposed personnel and its approach to the command relationship between the PAISC contractor and the Program Manager, Chemical Demilitarization. TRW notes that while the Army characterizes these deficiencies as disadvantages, since they were the basis on which TRW's proposal was rated third out of the three offerors in the competitive range, the Army was obligated to point them out to TRW during discussions. TRW asserts that only 4 of the 21 disadvantages were the subject of discussions and that the firm believed these 4 disadvantages had been resolved to the Army's satisfaction. TRW alleges that if the other disadvantages had been pointed out to the firm, TRW would have been able to correct the problem areas or point out to the Army where in the firm's proposal the information sought was provided, and thereby increase its technical score.

The Army denies that it failed to hold meaningful discussions with TRW. The Army asserts that the areas of TRW's proposal which it pointed out to TRW during the debriefing and which TRW now argues should have been the subject of discussions were areas in which TRW's proposal had disadvantages, not deficiencies. In the Army's view, a deficiency renders a proposal unacceptable unless cured, while a disadvantage is an aspect of a proposal that is risky or not beneficial and may be so minor that even a revision to a proposal in the area might not result in an increase in score. The Army argues that because the disadvantages it pointed out to TRW during the debriefing were not areas where TRW's proposal was unacceptable, the Army was not required to point them out to TRW during discussions.

The Army does note that TRW received only 3 out of 10 points under two subfactors, M.4.1.4.--correct application of command and network relationships--and M.4.5.1.--education and experience of proposed personnel--because its proposal had several disadvantages under each of these subfactors. The Army maintains, however, that a rating of 3 did not reflect a deficiency in the proposal because under the source selection plan only a score of zero was considered deficient. The Army asserts that in any case it did discuss the disadvantages in these two subfactors with TRW. Concerning subfactor M.4.5.1., the Army points to nine questions it raised in a August 14 letter concerning personnel qualifications and also asserts that it specifically discussed the program manager with TRW during oral discussions. Under subfactor M.4.1.4., the Army states that the heart of the disadvantages is "a troublesome

approach to [the] command relationship between the Program and Integration Support Contractor and the Program Manager, Chemical Demilitarization." The Army states that although it did not like TRW's approach, the Army understood it and did not consider it a proposal deficiency. The Army also points to four questions it asked TRW concerning this subfactor.

In the alternative, the Army argues that even if we find that it did not hold meaningful discussions with TRW, the protest should not be sustained because TRW did not suffer any prejudice. According to the Army, even if TRW's technical score increased somewhat as a result of further discussions under subfactors M.4.1.4. and M.4.5.1., its proposal would remain technically equal to the other proposals. Since its price would still be substantially higher than SAIC's or ADL's price, the Army argues, there is no reasonable chance that TRW would be in line for the award.

FAR § 15.610(b) requires that written or oral discussions be held with all offerors under a negotiated procurement who submit proposals in the competitive range. The fundamental purpose of this requirement is to advise offerors of deficiencies in their proposals and afford them the opportunity to satisfy the government's requirements through the submission of revised proposals. FAR § 15.610(c)(2); Federal Data Corp., B-236265.4, May 29, 1990, 90-1 CPD ¶ 504. There is no requirement, however, that an agency conduct all-encompassing discussions. Rather, agencies are only required to lead offerors into areas of their proposals that are considered to be deficient. In addition, where a proposal is considered acceptable and in the competitive range, the agency is under no obligation to discuss every element of the proposal that has received less than the maximum possible score. Centex Constr. Co., Inc., B-238777, June 14, 1990, 90-1 CPD ¶ 566.

Under the evaluation plan here, a raw score of four or above under the subfactors was considered satisfactory. We therefore agree that the Army was not required to discuss those areas of TRW's proposal for which TRW was rated at least four, since these areas of the firm's proposal were not considered deficient. However, while the Army argues that the areas of a proposal that received a score of three were not considered deficient, the fact is that under the evaluation plan a score of three was considered unsatisfactory, but negotiable with the offeror. Accordingly, we conclude that the Army was required to discuss with TRW the disadvantages found under those subfactors (M.4.1.4. and M.4.5.1.) for which TRW received a score of three.

Our review shows that in certain cases the Army did comply with its obligation to hold meaningful discussions with TRW on subfactors M.4.1.4. and M.4.5.1. by asking questions that led TRW into the areas of its proposal with which the Army was concerned. Thus, for example, under subfactor M.4.5.1., the SSEB cited the following disadvantages:

> "Experience was not provided chronologically. Experience and degrees were not always commensurate with the position or field of expertise."
>
> "A number of persons designated to support surety tasks cite no [relevant] surety experience; instead, a number of these have a background in environmental chemistry."

Based on these concerns, the Army posed the following questions to TRW during discussions:

> "The offeror's resumes did not show a chronology of work experience for individuals, i.e., where they previously worked and for how long. Could the offeror provide such information as actual time in service on particular jobs and with which companies. This will more clearly define their experience levels. Request that the offeror provide how long personnel have been with the companies bidding for this contract."
>
> "On the resumes, what is the description below a given name? This did not always correlate to the discussion under related experience . . . ."
>
> "Request that the offeror provide additional information regarding the depth of personnel resources for detection and monitoring of chemical surety materials. How many? How much experience? With what materials? What did they actually do? When?"

In other cases, however, the agency's discussion questions were less than adequate. Thus for example, under subfactor M.4.1.4., the Army asked the following question:

> "Please clarify the statement 'The QA Program must be site specific due to the different munitions at each site.' Our understanding of this statement is that the QA Program requirements will be the same, but that there will be slight differences in implementing the program (SOP's and QC procedures will be different), and that the PMCD QA Program

and the site program requirements will be the same (not dependent on munitions)."

We fail to see how this question put TRW on notice of the disadvantage found by the SSEB, described as follows:

"The relationship of [the Program Manager, Chemical Demilitarization] Safety and Surety Division and PAISC QA Manager not shown on Fig. 6-29."

Similarly, under subfactor M.4.5.1., the Army did not ask TRW any question that would have put TRW on notice that the SSEB was concerned because a proposed team leader did not have sufficient safety/hazard analysis experience.

Nevertheless, even assuming that overall the discussions on these two subfactors were inadequate, we will not sustain a protest that a procuring agency failed to hold meaningful discussions with the protester unless the protester demonstrates that it was prejudiced as a result. That is, the protester must show that if it had been given the opportunity to participate in meaningful discussions it could have raised its score sufficiently to have a reasonable chance of receiving the contract award. Morrison-Knudsen Co., Inc., B-237800.2, May 2, 1990, 90-1 CPD ¶ 443.

Here, the record does not provide a basis to conclude that TRW was prejudiced by the Army's failure to engage in meaningful discussions with the firm. After the BAFOs were evaluated, the weighted scores of the three offerors in the competitive range were: ADL, 547.25; SAIC, 478.83; and TRW, 471.58. Based on these scores and his review of the evaluations, the SSA determined that the three proposals were technically equal. The costs as evaluated were: ADL, $196,895,987; SAIC, $127,722,021; and TRW, $274,133,198. The SSA decided to award the contract to SAIC on the basis of its lower cost despite ADL's higher technical score. If further discussions had been held with TRW on the two subfactors for which TRW received a point score of 3 and TRW had been able to raise its score to 10 for each of these subfactors--an unlikely event since, as noted, the Army did put TRW on notice of some of the disadvantages during discussion--TRW's total weighted score would increase by 87.50 points to 559.08.1/ While this score

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1/ Factor M.4.1. was assigned 250 weighted points and there were 4 subfactors under this factor. Thus, each subfactor was potentially worth 62.5 weighted points. Factor M.4.5. was assigned 125 weighted points; there were 2 subfactors under this factor, so again each was worth 62.5 potential points. Each subfactor was worth 10 potential raw points. Thus, for

(continued...)

is higher than the awardee's technical score (478.83) and the highest scored offeror's technical score (547.25), on a scale of 1,075 available points the three proposals are still closely grouped and we see no reason to assume that the SSA would have changed his conclusion that they are technically equal. Concerning cost, we have no reason to believe, and TRW does not argue, that if the Army had held further discussions, the firm could have lowered its proposed cost to overcome the $146,411,177 price difference between its proposal and SAIC's. Thus, since TRW's proposal would at best remain technically equal to the proposal of SAIC, but TRW's price still would have been substantially higher than SAIC's, we do not believe that TRW would have had a reasonable chance of receiving the award even if further discussions had been held with the firm. Moreover, it is unlikely that the SSA would consider the 80.25 point advantage of TRW over SAIC worth an additional $146,411,177, since he specifically determined the ADL's 76 point advantage over SAIC was not worth an additional $70 million.

UNREASONABLE EVALUATION

TRW protests that the Army's evaluation of the firm's technical proposal was unreasonable. In reviewing an agency's technical evaluation, we examine it to ensure that it was not arbitrary or in violation of the procurement laws and regulations. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted arbitrarily. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588.

TRW first asserts that the Army unreasonably found that neither TRW nor its proposed subcontractors sufficiently demonstrated trial burn experience.2/ TRW argues that this conclusion is unreasonable because trial burn experience was indicated in the resume of one of TRW's employees that was included in its proposal. In any case, TRW contends that it was not required to demonstrate trial burn experience because by letter of November 5, the firm was told to delete the

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1/(...continued)
each subfactor an increase of 1 raw point would increase an offeror's weighted score by 6.25 points. If TRW's raw score for each of the 2 subfactors was raised by 7 points its weighted score would increase by 87.50 points (14 x 6.25).

2/ A "trial burn" is a test run of one of the Army's incinerators using a particular chemical agent. Certain states require a trial burn on some or all chemical agents as part of the process of obtaining a permit from the state to operate with the agent.

preparation of trial burn plans from its proposal because these would be performed by another contractor under a separate contract. TRW therefore argues that it reasonably concluded that it was not required to demonstrate trial burn experience.

The Army responds that in reviewing trial burn experience in TRW's technical proposal it did in fact take into consideration the resume to which TRW points. The Army asserts, however, that the experience proposed was not enough for the types of orders it contemplated would be issued under the contract. The Army also disagrees that the November 5 letter deleted the requirement for the contractor to have trial burn experience. The Army states that the November 5 letter was merely to inform TRW not to write trial burn plans because if trial burns were needed they would be performed under a different contract or order, rather than under the contract at issue. The Army contends, however, that the PAISC contractor would still require trial burn experience because it would be required to support the contractor performing the trial burns.

We find no basis to conclude that the Army's evaluation of TRW's proposal concerning trial burn experience is unreasonable. TRW does not refute the Army's statement that the experience of only one person was not sufficient to meet the requirements of the solicitation. Instead, TRW relies on its contention that the November 5 letter sent by the Army relieved the firm of the requirement to demonstrate trial burn experience. TRW's interpretation of the letter is not reasonable. The November 5 letter stated that:

> "[T]he preparation of trial burn plans should be deleted since this would be performed under a separate contract. . . ."

It is unreasonable for TRW to conclude from this statement that any requirement for trial burn experience had been deleted. The contract specifically calls for a contractor to provide extensive support services to a number of other contractors that are performing various chemical demilitarization functions. The RFP also specifically provides that:

> "[T]he Contractor shall be responsible for . . . tracking and monitoring regulatory compliance issues concerning safety, security, quality assurance, chemical surety, and the environment and requiring [Program Manager, Chemical Demilitarization] resolution. This necessitates for broad expertise in regulatory compliance and permits acquisition under . . . state and local government ordinances."

Thus, since a contractor under the program may be required to perform trial burns, it is reasonable for the Army to expect the support contractor to have trial burn experience since a lack of such experience might impair the contractor's ability to oversee and manage the contractor actually performing the trial burns.

TRW also argues that the Army's evaluation of its technical proposal was unreasonable to the extent the evaluators concluded that TRW did not demonstrate the proposed program manager's experience managing task-type contracts. This disadvantage was listed once under factor M.4.3., Technical Management, and once under M.4.5., Technical Personnel. TRW states that its proposed program manager (Dr. George Carruth) has extensive experience in managing a major, multipurpose Army Chemical Weapons installation, consisting of many personnel and multiple projects. TRW argues that this experience translates to managing a task-type contract. TRW further asserts that the program manager's experience with the program from its inception, his role in establishing the Army's surety programs, and his 33 years of experience in chemical weapons programs should have been considered as a major advantage and was not.

The Army responds that it did consider Dr. Carruth's extensive experience on Army programs. It also recognized, however, that the experience did not include program management of a task-type contract as a contractor employee. The Army explains that there is a difference between managing a task-type contract and Dr. Carruth's management experience. According to the Army, in a task-type contract, the manager is managing an organization that has not yet been established. In addition, a program manager of a task-type contract must juggle a number of matters at the same time, each of which may be unrelated and dissimilar and in fact sometimes in direct conflict. The Army explains that Dr. Carruth's experience is more linear. He was a functional manager handling one matter at a time, even though there were many personnel and projects within that function. In addition, the organization was already in place and had chains of command and communication established, an organizational structure, standard operating procedures, personnel hired and trained, and an established mission. The Army contends that this linear management does not translate to task order management.

TRW has not demonstrated that the Army's evaluation of Dr. Carruth's experience was unreasonable. The Army did in fact recognize that Dr. Carruth was a well-seasoned manager. It was not unreasonable, however, for the Army to consider that Dr. Carruth did not have experience managing a task-type contract. TRW does not argue that there is no difference

between the manager of a task-type contract and the manager of a major installation. TRW only insists that Dr. Carruth's experience should be deemed the equivalent of a task-type contract manager. However, the solicitation specifically provided regarding the program manager that the nature of the contract required a seasoned technical supervisor experienced with task order contracting to direct the offeror's contract effort. Thus, given the RFP's specific advice and the Army's explanation of the difference between Dr. Carruth's experience and experience with a task-type contract, we have no reason to question the Army's evaluation.

In its initial protest submission, TRW pointed to two other items which it alleged were unreasonably evaluated--TRW's discussion of the use of existing automatic data processing tools, and TRW's surety experience. The Army addressed each of these items in its protest report explaining why its evaluation was reasonable. In its comments on the report, TRW did not respond to the Army's report concerning those two areas. We therefore consider TRW's protest regarding the evaluation of its proposal in these two areas abandoned.

COST REALISM ANALYSIS

TRW protests that the Army failed to perform a reasonable cost realism analysis of SAIC's proposal. TRW notes that the Army adjusted SAIC's labor hours upward by 44 percent and that even as adjusted SAIC's proposed costs are still less than 40 percent of the independent government cost estimate. TRW acknowledges that the Army adjusted the labor hours and costs for SAIC's proposal for each of the cost-plus-fixed-fee tasks and then determined a probable cost to the government for SAIC's performance. TRW argues, however, that the cost realism determination was improper because the Army did not consider that the low cost of SAIC's proposal showed that SAIC did not understand the work to be performed and was not capable of performing the contract.

This allegation is not substantiated by the record. In evaluating SAIC's technical proposal, the Army did consider the level of effort SAIC proposed for each task and did downgrade the score where the level of effort proposed was not sufficient to perform. The fact is, however, that the Army generally found that SAIC's proposed level of effort was sufficient for SAIC's technical approach. Given that SAIC's proposed level of effort was sufficient and its personnel qualified, we find that the Army had no reason to question whether SAIC understood the work to be performed and was capable of performing despite the firm's low proposed cost.

COMPETITIVE RANGE DETERMINATION

In its comments on the agency report, TRW argued that, given the fact that its proposed cost was so much higher than the government estimate, it should not have been included in the competitive range.

This issue is untimely raised. Our Bid Protest Regulations require that protests not based upon alleged improprieties in a solicitation be filed no later that 10 working days after the protester knew or should have known of the basis for protest, whichever is earlier. 56 Fed. Reg. 3,579, supra (to be codified at 4 C.F.R. § 21.2(a)(2)). When a protester supplements a timely protest with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements. John Short & Assocs., Inc., B-239358, Aug. 23, 1990, 90-2 CPD ¶ 150. Here, TRW learned that basis of its contention that its proposal should have been eliminated from the competitive range--the difference between its proposed costs and the government estimate--on May 28, when it received the Army's protest report. TRW was therefore required to raise this issue by June 12, 10 working days later. See Holmes & Narver, Inc., B-239469.2; B-239469.3, Sept. 14, 1990, 90-2 CPD ¶ 210. Since TRW did not raise the issue until July 2, the issue is untimely and will not be considered on the merits.

TRW argues that the issue is not untimely raised because it is based on information in the agency report and was filed in the comments TRW submitted in response to the agency report, on the filing date established by our Office for those comments. In this regard, a protester generally must file comments on the agency report within 10 working days after it receives the agency report. 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.3(k)). We established a later filing date for the comments in this case because the agency withheld certain documents from TRW, which were later released to the firm. Our sole reason for permitting TRW to file its comments later than 10 working days after May 28, the date the protester initially received the report, was that the firm did not receive the complete report until the documents were released. We did not give the firm an extension of the time in which to file a protest. See Arthur D. Little, Inc., B-243450.3, June 19, 1991, 91-2 CPD ¶ ___. The fact that our Office recognizes the need for a later comment filing date

based on when a protester receives a complete report does not change the rule that a new protest basis must meet the timeliness requirements established by our regulations.

The protest is denied in part and dismissed in part.

James F. Hinchman
General Counsel